RISK WATCH

RW

FEBRUARY 2022

LOSS PREVENTION MEET THE TEAM

NAVIGATION THE DANGERS OF FATIGUE AND POOR BRIDGE PROCEDURES

TEMPERATURE SENSORS AND DRY BULK CARGOES

THE CARRAGE OF COAL RECENT EXPERIENCE IN PAKISTAN

CLAIMS AND LEGAL IMPORTANT CASES DISCUSSED

BRITANNIA P&I
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A MESSAGE FROM THE EDITOR

In our first edition of 2022 we are very pleased to introduce you to our loss prevention department in the first of a series of articles about the various teams and offices around the world.

We are very lucky at Britannia to have five Master Mariners working full time in the loss prevention team – four based in London and one in Singapore. Together they provide a wealth of experience and expertise covering just about every aspect of the business.

We also continue our series of studies of recent casualties, this time looking at how fatigue and poor bridge procedures contributed to a grounding and the subsequent loss of the ship. Our focus on various cargo issues leads us to a discussion about the use of temperature sensors; particularly important when carrying many bulk cargoes. We also analyse a recent case involving coal shipments from Indonesia to Pakistan.

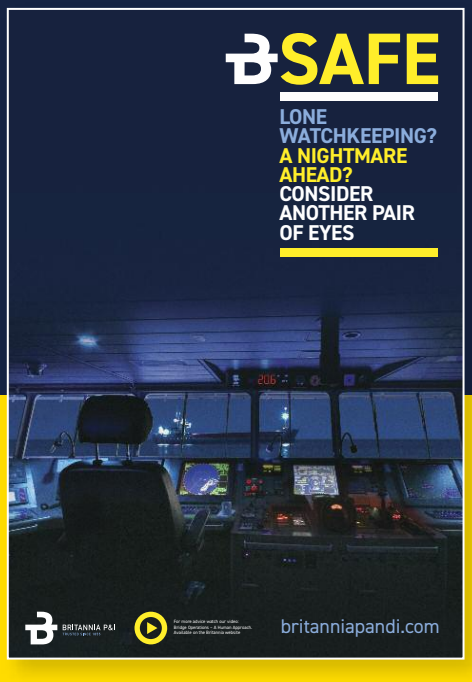
As always, we welcome your comments and feedback – do get in touch with the marketing and communications team at the Club with your suggestions.

CLAIRE MYATT
Editor

We hope you enjoy this copy of Risk Watch. We will be looking for ways to maintain and increase the usefulness, relevance and general interest of the articles. If you have any ideas or comments please send them to: britanniacommunications@tindallriley.com

MEET THE TEAM
LOSS PREVENTION

THE CLUB'S LOSS PREVENTION DEPARTMENT CONSISTS OF FIVE MASTER MARINERS, MOST WITH COMMAND EXPERIENCE, INCLUDING ONE DUAL CERTIFIED MASTER MARINER/MARINE ENGINEER AND HAS A WEALTH OF VARIED SEAGOING AND SHORE-BASED EXPERIENCE INCLUDING MANY YEARS WORKING IN P&I LOSS PREVENTION. WE ARE BASED IN BOTH LONDON AND SINGAPORE, WORK CLOSELY WITH OUR COLLEAGUES IN UNDERWRITING AND CLAIMS, AND, MOST IMPORTANTLY, WITH OUR MEMBERS.



As a department we strive to be recognised as a centre of excellence, trusted as the industry's preferred provider of P&I Loss Prevention services, by means of the provision of prompt, credible and informative guidance to our Members to support their safe and efficient operations.

New owned Members participate in a Management Review undertaken by a member of the team, to identify and assess any areas in the new Member's operation which could give rise to an enhanced risk of claims. We also provide practical guidance and feedback on what can be done to mitigate the risk.

Services provided by Loss Prevention to Members extend to producing publications, including our award winning **BSafe** case studies, initiatives and posters focusing on seafarer safety, health and security. Our new series of Loss Prevention Insights, written in conjunction with industry experts, focus on specific concerns. Contributions are also made by the team to the website Knowledge Base, addressing claims issues, new regulations and other areas of Loss Prevention concern. We undertake periodic webinars and, when travel restrictions are eased, aim to resume visiting Members to undertake training seminars addressing topical Loss Prevention issues, in particular for their seafarers. With the Loss Prevention team all being former seafarers, we understand how important and critical this training is to help ensure safe, efficient and claim-free vessel operation.

The Loss Prevention department arranges and manages the Club's condition survey function by appointing independent surveyors to inspect vessels using the Club's web-based survey checklists. The condition survey process is managed from the time when a condition survey is triggered, due to meeting certain age criteria on entry, or due to a number of other reasons, e.g. following a Port State Control detention, or a large claim, through to the attendance of the surveyor, and finally to the satisfactory rectification of identified deficiencies.

The Loss Prevention department works closely with the Members' Standards Sub-Committee, who guide Loss Prevention through recommendations and advice on expected technical and operational standards for the membership, whilst also considering future risks which may give risk to new claims concerns.

We have several current research projects, all aiming to reduce the number and frequency of claims by identifying existing and future risks:

• We are representing the International Group of P&I Clubs in the MARIN (Maritime Research Institute Netherlands) TopTier project in relation to safety concerns with existing and future container vessels.

• An investigation into the psychology of decision making by seafarers placed in deteriorating safety critical situations on board vessels.

• Developing simple onboard reference material/guidance to prevent excessive parametric and synchronous rolling on container vessels.

• A study into how climate change may affect significant wave height and influence extreme weather events at sea, and therefore the potential for more frequent, and/or larger claims.

MEET THE TEAM – **LOSS PREVENTION** (CONTINUED)

CAPTAIN SIMON RAPLEY
Divisional Director, London; Master Mariner who has served as Captain on AHTS vessels and a safety standby vessel, as well as having seagoing experience on a capesize bulk carrier, a RORO, general cargo and container ships, VLCCs and numerous offshore vessel types.

Simon has also worked as a consultant involved in offshore oil and gas field construction and has investigated incidents on behalf of P&I, H&M and cargo underwriters. He also worked briefly as a Harbour Master in the Persian Gulf. Simon joined the Club in 2021 having previously worked in Loss Prevention at two other International Group P&I Clubs for 12 years, most recently as Head of Loss Prevention.

CAPTAIN SLAV OSTROWICKI
Loss Prevention Manager, London; Master Mariner, MSc Eng (Maritime Transport, Navigation) with 16 years of seagoing experience, of which six were in command.

Slav has sailed on bulk carriers, general cargo and container ships. His subsequent 16 years of shore-based experience included ship operations and marine vetting and assurance of dry cargo ships, tankers and gas carriers, as a vetting superintendent and marine vetting director with globally recognised organisations. Slav has performed management reviews, as well as ISM and TMSA audits and in-depth risk assessments through data analysis. He has also investigated marine incidents and claims and advised various parties on safety management processes. Slav joined the Club in 2020.

CAPTAIN FAIZUR RAHMAN
Loss Prevention Officer, London; Master Mariner with 23 years' seagoing experience, including 12 years in command.

Faizur has served on a variety of vessel types, including product, chemical and gas tankers, general cargo and container vessels, dry bulk and RORO's. Faizur has extensive shore-based surveying, consultancy and auditing experience relating to ships, cargoes and ports, including work for Flag State Administrations. Faizur has also worked in brokerage and fixing of ships and cargoes, and as a Marine Superintendent and Port Captain for major international shipping lines. He joined the Club in 2021 and at present is principally involved in running the condition survey function of the Loss Prevention department. He also assists with other technical matters, as required.

JACOB DAMGAARD
Associate Director, Singapore; Master Mariner/Dual Maritime Officer, BSc (Maritime Transport and Nautical Science).

Jacob has sailed as both an engineer and deck officer with a major shipping line, serving mainly on container ships. Before joining the Club, he worked with a large ship management company in London acting as Designated Person Ashore and Company Security Officer for a fleet of container vessels and car carriers. Previous experience also includes working as a Flag State surveyor for the Danish Maritime Authority, dealing mainly with surveying and certification of new buildings as well as Flag and Port State related matters. He also has experience of working in the offshore and bunkering industries. He joined the Club in London in 2018 and relocated to the Club's Singapore office in 2019.

CAPTAIN SHAJED KHAN
Loss Prevention Manager, London; Master Mariner, GDL, MSc (Marine Transport with Management) with emphasis on the human element in shipping.

Shajed has seagoing experience on product tankers, chemical tankers, bulk carriers and general cargo ships with command experience on tankers. He has carried out inspections for Flag States, oil majors, internal audits for shipowners and investigations into navigation and cargo issues. Shajed has also worked as a surveyor, carrying out cargo, damage, warranty, heavy lift, quality and safety surveys. Shajed assists claims handlers with technical input, enquiries from Members, management reviews, claim reviews, seminars, webinars, publications, posters and managing the condition survey programme. He is also involved in special projects with Members to review their processes and make recommendations to prevent/limit losses. Shajed joined the Club in 2009.

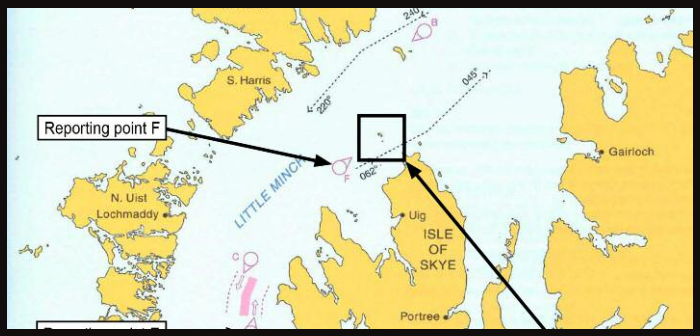
24/7

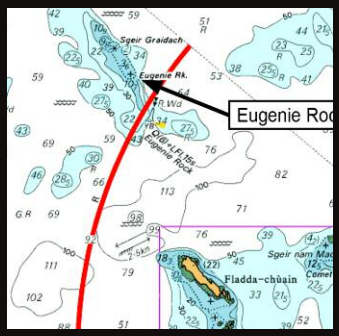
Members are reminded that the Loss Prevention department is available to assist at all times and are encouraged to make contact on any regulatory, operational, safety or technical matter where the expertise of our team of experienced mariners may be of assistance.

Contact us at
lossprevention@tindallriley.com

Follow Britannia P&I on social media for the latest real-time updates from the Loss Prevention department and across Britannia.

WARNING OF THE DANGERS OF FATIGUE AND POOR BRIDGE PROCEDURES





Images courtesy MAIB – Serious Accident Report No7 2021
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A GENERAL CARGO VESSEL RAN AGROUND ON SGEIR GRAIDACH SHOAL IN THE LITTLE MINCH ON THE WEST COAST OF SCOTLAND. LUCKILY THE CREW WERE SAFELY EVACUATED FROM THE SHIP BY THE LOCAL COASTGUARD, BUT THE VESSEL SUSTAINED EXTENSIVE DAMAGE AND WAS LATER DECLARED A CONSTRUCTIVE TOTAL LOSS. THE INCIDENT INVESTIGATION REPORT IDENTIFIED A NUMBER OF FACTORS CONTRIBUTING TO THE INCIDENT, WHICH PROVIDE VALUABLE INSIGHTS FOR MEMBERS. THE FACTORS INCLUDE FATIGUE, POOR BRIDGE PROCEDURES AND THE ISSUE OF SAFE MANNING LEVELS.

DEPARTURE

The 2175 GT general cargo vessel arrived at Drogheda, Republic of Ireland, to load 1927 tonnes of SRF (Solid Recovered Fuel) bound for Slite, Sweden. It took approximately two days to load the cargo, during which time the chief officer oversaw cargo operations. There were eight crew onboard; the master, chief officer, chief engineer, second engineer, an able seaman who doubled as a cook, plus three additional able seamen. On the day of departure, the chief officer was on deck overseeing the completion of cargo operations as he was the only other watchkeeping officer available. At 2030 the ship departed from Drogheda and made its way out into the Irish Sea, heading towards the Northern Channel between the Northern Irish and Scottish coasts.

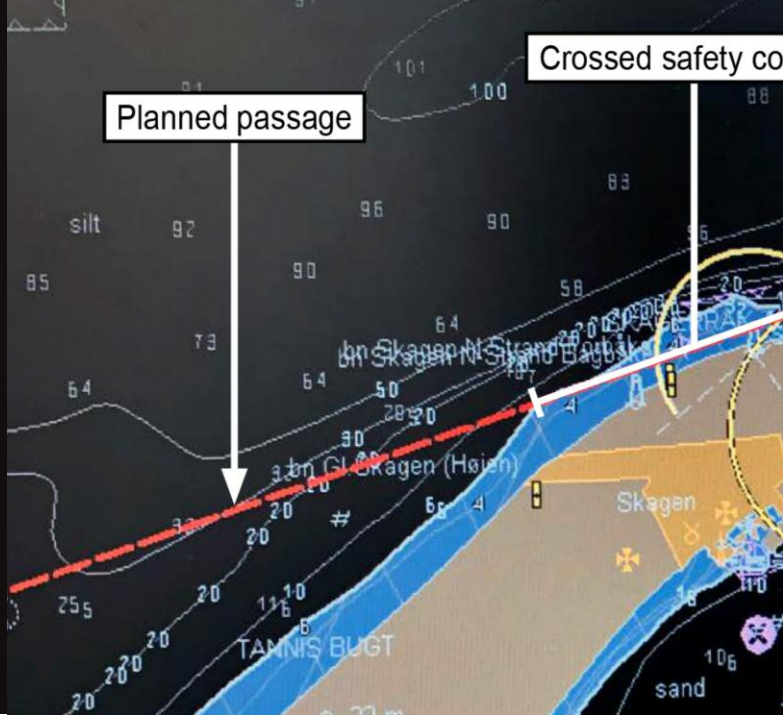
THE INCIDENT

Later that evening the ship reached the Minches, a passage which runs between the inner and outer Scottish Hebrides and is made up of the Little Minch to the south, and the North Minch. The master was on watch. At 2024 he contacted Stornoway Coastguard Operations Centre (SCOC) to report having passed the southern limit of the Minches voluntary reporting system. At 2055 the ship entered the first of two Traffic Separation Schemes (TSS) in the Minches and reported in to the SCOC a second time.

The master and chief officer shared the bridge watchkeeping at sea by way of a 7-hour watch and a 5-hour watch in each 24 hours, the master keeping watch 0700 to 1200, and 1700 to 0000. Shortly before the end of the master's watch, the chief officer arrived on the bridge with an able seaman. The weather had been steadily deteriorating and seas were rough to very rough with winds at Beaufort 6 – 9. Visibility was good.

Following the watch handover, the chief officer positioned himself near the central conning position, with use of the starboard radar and back up ECDIS display. He had slept for 3 hours prior to the start of his watch, following a busy period in port supervising loading operations. The able seaman, who was required on watch in hours of darkness only, stood next to the main ECDIS screen on the port side of the bridge.

WARNING OF THE **DANGERS OF FATIGUE** AND **POOR BRIDGE PROCEDURES**
(CONTINUED)



At 0058 the ship was making good a speed of 10.6 knots on a course of 032 degrees, approaching the reporting point for the start of the second TSS, near where the Little Minch ends and the North Minch begins. The chief officer contacted the SCOC to report the ship's position.

The International Maritime Organisation (IMO) recommends a route for north bound traffic within the TSS that passes between the islands of Fladda-chuain and Eileen Trodday. The ship's actual route was not the recommended route but instead followed a track running approximately 1nm north of the southern cardinal mark on Eugenie Rock (easily identifiable on the chart and positioned north of both the previously referenced islands).

At 0135 the chief officer received a VHF call from a nearby fishing vessel warning him that his ship was headed into 'shoal waters'. After switching to a working channel (67) the chief officer expressed thanks for the information received, confirmed he understood, and advised that he would be altering course in the next few minutes.

Shortly after ending the VHF call, in accordance with the passage plan and having reached his next waypoint, the chief officer altered course 10 degrees to starboard. At 0141 two heavy impacts were felt on board and the ship ceased forward motion. Realising that the ship had grounded, the chief officer turned on the deck lights and put the engine telegraph to 'stop'. The ship had grounded on Sgeir Graidach rock, a charted hazard.

In the minutes that followed the grounding, a second fishing vessel alerted the Stornoway coastguard. The master arrived on the bridge and the able seaman was sent to wake the rest of the crew. In a visual inspection with a flashlight, the chief officer was able to see rocks over the ship's port side. The forepeak tank, empty on departure from Drogheda, was sounded and brought back a reading of 3.5 meters, indicating water ingress. The master and chief officer continued to assess the damage as best they could. They determined that the bow thruster space was taking on water, but that the number 1 ballast water tanks port and starboard were likely still watertight.

The ship's movement on the rocks steadily worsened. Eventually, the master sounded the general alarm, calling all crew back to the bridge where they donned immersion suits and, unable to stand safely due to the violent movements of the ship, lay on the deck of the bridge awaiting rescue. At 0307 the master gave the order to abandon ship and by 0421 all the crew had been taken to Stornoway by coastguard helicopter 'Rescue 948'.

It was not until two days after the grounding that the first salvage crews were able to board the ship and a further ten days later the ship was re-floated and towed away for disposal. It was declared a constructive total loss.

ANALYSIS

A full investigation was carried out by the UK Marine Accident Investigation Branch (MAIB) and we highlight some of the findings of this investigation below.

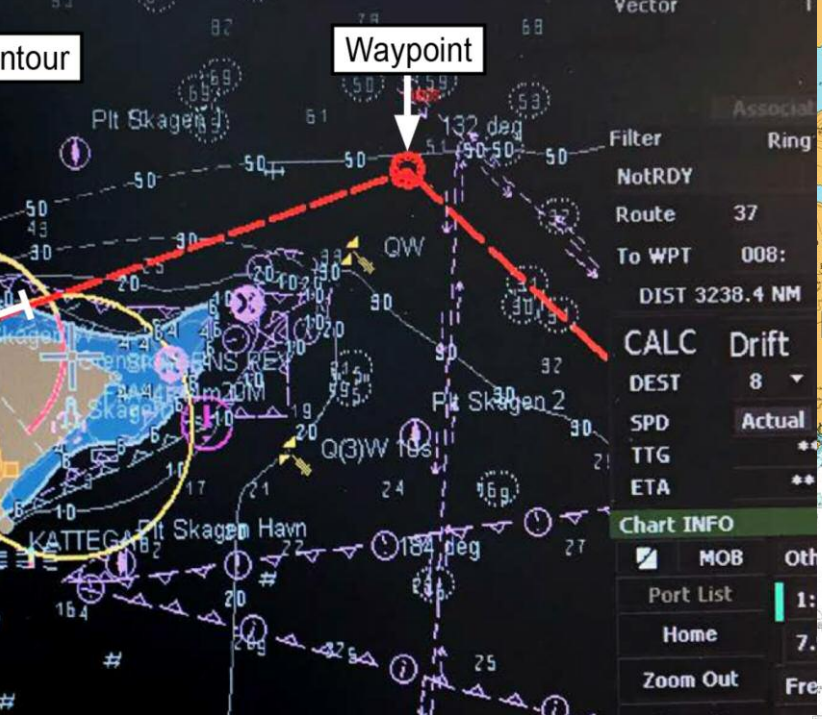
Both the master and the chief officer had the correct STCW certification and were experienced mariners. They had completed both generic and type specific ECDIS training. However, the passage plan in use at the time of the grounding contained significant errors across every aspect of the process, from the appraisal and the planning to the execution and monitoring of the plan.

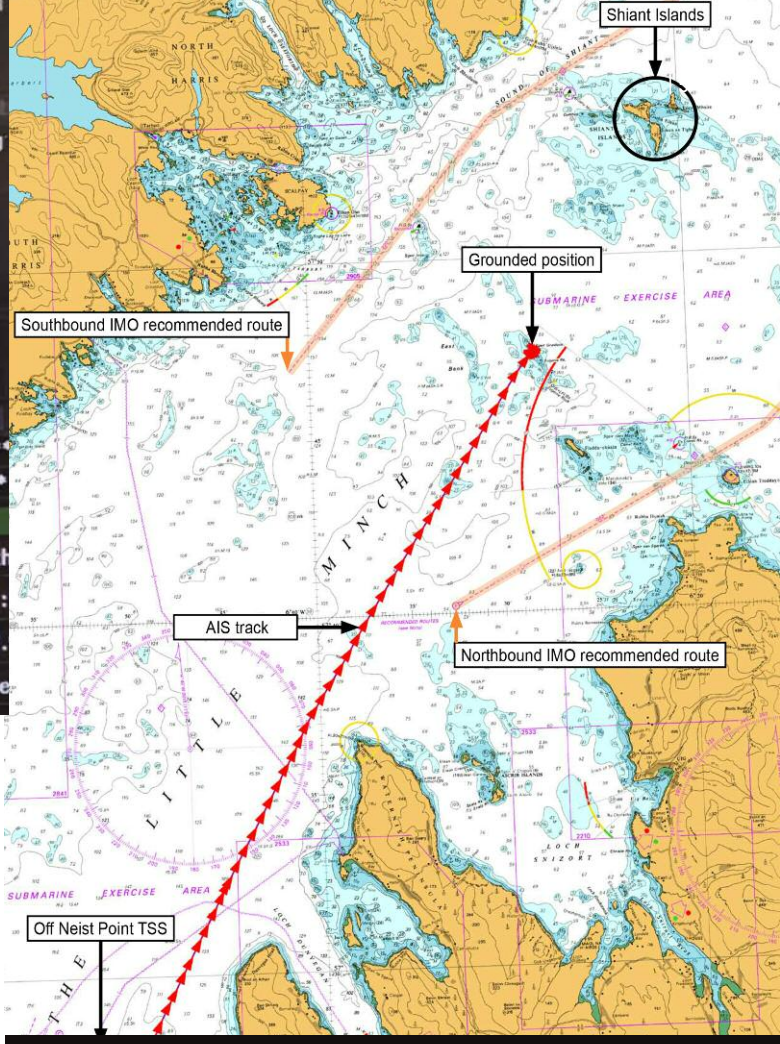
Some of the points highlighted by the investigation are as follows:

• The ship commenced the voyage without a completed passage plan and there was no comprehensive appraisal of the plan nor had it been independently checked.

• The ship's SMS did not stipulate the minimum under keel clearance (UKC) or provide guidance on its calculation and in this case no minimum UKC had been calculated at all.

• All the alarm audio buzzers on the ship's two ECDIS units were set to level 0 (no sound) and whilst the depth settings had been set, the track still passed through more than one area without sufficient UKC.





• The electronic chart cell covering the IMO recommended route through the northern TSS was not loaded into the ECDIS system and the passage planning had been undertaken using incorrectly scaled ENCs.

• If a safety check of the route been carried out prior to departure (it is not known whether this took place or not) it would have shown up 479 separate errors. A safety check for the leg of grounding alone showed 15 errors, which included 2 hazards (isolated dangers) and the crossing of a safety contour.

• Although the ship had been manned in accordance with the Safe Manning Document, the levels of manning were found to result in fatigue and ineffective passage planning, which contributed to the incident.

• The lookout had not been effectively integrated into the bridge team, which left the C/O as the single point of failure.

• The ship's managers did not have the necessary experience or training to conduct audits effectively and also the findings of previous audits had not been used to improve the safety of navigation.

THE ROLES OF MASTER AND CHIEF OFFICER

In the ship's SMS, in a section below the title 'Job Instructions – Chief Officer', the company is called a 'flexible organisation' and states that 'each employee may be required to perform duties other than those included in the job instructions, depending on the company's requirements'. The master assumed that this paragraph allowed him to carry out the passage planning in situations where the chief officer was required on deck, in order to avoid any delay to the ship's departure.

However, the voyage planning guidance in the SMS, which reflects the requirement in SOLAS that the plan be cross checked by another officer (usually the master) was written with the interaction between officer of the watch and the master in mind. Whenever the master carried out the passage plan himself, no cross check by another watchkeeper was made since checking the master's work ran contrary to the dynamics onboard.

RECOMMENDATIONS

The incident serves as an important reminder of the disastrous effects of fatigue and inadequate bridge procedures. Various recommendations were made by the MAIB in response to this grounding including:

• To review the number of watchkeeping officers on board to ensure that sufficient personnel are available to conduct essential tasks and to protect the watchkeepers against the effects of fatigue.

• To review the company's SMS procedures covering voyage planning and use of ECDIS and amend the SMS to include clear guidance on calculation of safe UKC and safety depth along with the correct application of safety contours and alert limit settings.

• To ensure that if the voyage planning is conducted by the master there must be an independent check by another navigating officer and the company must allow sufficient time for developing and verifying the voyage plan on board.

• To ensure that the lookout is a fully integrated member of the bridge team.

• To ensure that all company auditors have an appropriate level of knowledge to identify any non-compliant use of the onboard ECDIS system during audits and that there is a system in place to make sure that all learning opportunities are followed up and implemented accordingly.

The full MAIB report can be accessed here:
http://ow.ly/csVq30s8sNf

DRY BULK CARGO AND THE USE OF TEMPERATURE SENSORS

A SIMPLE TOOL FOR IMPORTANT WORK

AS MANY READERS WILL KNOW, CARGO TEMPERATURE SENSORS CAN BE A VITAL TOOL FOR ASSESSING THE SUITABILITY OF CERTAIN DRY BULK CARGOES FOR LOADING AND ALSO FOR HELPING TO DETERMINE HOW THE CARGO SHOULD BEST BE CARED FOR WHILST ON THE VESSEL.

DEPENDING ON THE CARGO TO BE LOADED, KNOWING ITS LOADING TEMPERATURE MAY SERVE MULTIPLE PURPOSES. FOR HYDROSCOPIC CARGOES SUCH AS SOYA BEANS OR RICE, KNOWING THE LOADING TEMPERATURE OF THE CARGO WILL OFTEN BE USED TO DETERMINE WHEN THE CARGO SHOULD BE VENTILATED DURING THE VOYAGE, AS THE 3°C RULE PRESCRIBES THAT VENTILATION SHOULD ONLY BE CARRIED OUT WHEN THE EXTERNAL TEMPERATURE IS AT LEAST 3°C COOLER THAN THE AVERAGE CARGO LOADING TEMPERATURE[1]. FOR SOYA BEANS, MEASURING THE CARGO TEMPERATURE MAY ALSO BE USED TO ASSESS WHETHER THERE IS VARIATION BETWEEN LOTS, WHICH MAY INDICATE WHETHER SOME LOTS ARE ALREADY DETERIORATING.

For other cargoes such as coal, knowing the loading temperature is important to ensure the safety of the cargo and the ship. As per the International Maritime Solid Bulk Cargoes (IMSBC) Code, coal shall not be loaded if its temperature is above 55°C. The reason for imposing a limit is that, if the cargo is above 55°C at the time of loading, the rate of the self-heating reaction once in the cargo hold is likely to reach a temperature point of self-ignition before the reaction can be slowed down by restricting oxygen levels. The IMSBC Code does not include any provision indicating average temperature values for coal as being acceptable, and so the carrier should be careful when accepting average temperature readings provided by the shipper.

[1] **For more information on ventilation of hygroscopic cargo please see Loss Prevention Insight on grain cargoes**
https://britanniapandi.com/wp-content/uploads/2021/11/Britannia-Loss-Prevention-Insight-Carriage-of-Grain-and-Oilseed-Cargoes-11-2021.pdf

Another example of a cargo for which an average loading temperature is required in order to ascertain whether it is safe to carry is direct reduced iron (DRI). The IMSBC code contains three schedules covering DRI cargoes: being DRI (A), (B) or (C). Past incidents involving DRI cargoes led to loss of life and total loss of ships, as the particular risks include the risk of overheating, and fire/explosion during transport. Therefore, the IMSBC Code requires that both cargo moisture content and temperature are monitored during loading and states that if the temperature exceeds 65°C, the cargo should not be loaded. The temperature readings must be recorded in a log for each cargo lot loaded and a copy provided to the master.

Also, for cargoes where the IMSBC Code does not directly stipulate a specific temperature limit, monitoring the loading temperature is still important in order to assess any associated risks in relation to the loading of the cargo. This is especially relevant for cement which can be loaded direct from the processing plant at a high temperature. This can be detrimental to cargo hold coatings and also has the potential to raise the temperature of fuel in fuel oil tanks adjacent to the cargo holds, to a temperature above the fuel's flash point. The temperature of the cement should be determined prior to loading and, where it is found to be above the flash point of fuel in adjacent tanks, it should be allowed to cool prior to loading. Furthermore, it is recommended that the cement is not loaded when at a temperature of 80°C or above, to prevent possible damage to the cargo hold coating.

The average loading temperature is determined by regularly measuring and recording the temperature of the cargo upon loading. It is best practice to record the temperature of cargo being loaded into in each hold individually, as the cargo could come from different stockpiles, or different levels from within the stockpiles and have different temperatures. So, it is not correct practice simply to measure the loaded temperature of cargo in one hold and apply the results to all holds.

There are various types of thermometers available on the market which can be used to measure the loading temperature of the cargo and Members will need to assess carefully the cargo to be loaded, to determine which model will best suit their operational requirements. Probably the most common is the infra-red thermometer, which are easy to use and cost-efficient. Most models allow for readings to be taken from a distance e.g. from the hatch coming without having to enter the cargo hold. However, they need to be used with caution, as they will only measure the surface temperature of the cargo. If measurements are taken during the day in a very hot and sunny environment, the surface will have been heated by the sun so could be higher than the cargo temperature below the surface.

Another type is the wired digital thermometer, which are also cheap and easy to use and is useful for measuring the temperature at depths of 30 to 50 cm below the surface. However, it requires the person to be close to the cargo to obtain a measurement, which may not always be practical. Thermal cameras can also be used. These provide the user with instant and continuous measurements of the entire cargo surface in a hold and can detect any potential heat pockets. Furthermore, they provide several features which can be very helpful for the crew in order to monitor the cargo temperature both during loading and the voyage and are now also available at an affordable cost.

Irrespective of the type used, the thermometer must be regularly serviced and calibrated in accordance with the manufacturer's instructions. This will include checking batteries as required and making sure there is sufficient stock of replacement batteries onboard. It is recommended to have a reserve thermometer available should one malfunction. Furthermore, the ship's crew must be trained in how to use the thermometer and it is very important that they understand its limitations. Checking onboard calibration and service records together with the crew's understanding and use of the thermometer should a fixed part of a Member's internal audit process.

The cargoes listed in this article are just a few examples which highlight the importance of monitoring the cargo temperature during loading to establish both the correct cargo care during the voyage and whether the cargo is completely safe to load, but also to identify any potential underlying risks. However, obtaining accurate temperature readings of the loaded cargo is not always easy, requiring both the right equipment and skillset by the people involved.

The Loss Prevention Insight gives more detail on the carriage of grain and oilseed cargoes: **http://ow.ly/W3Oq30s8ITz**

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THE CARRIAGE OF COAL
RECENT EXPERIENCE IN PAKISTAN

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THE CLUB HAS RECENTLY SEEN A SIGNIFICANT NUMBER OF CLAIMS IN RELATION TO COAL CARGOES SHIPPED FROM INDONESIA TO PAKISTAN.

CARGO SHORTAGE CLAIMS

The outturn quantity of coal, like all other solid bulk cargoes, is calculated on the basis of a joint draft survey. If the discharged quantity is found to be in accordance with the quantity stated in the bill of lading, the vessel will not bear any liability unless the cargo interests dispute the results of the joint draft survey.

The Club is now seeing a number of disputes in Pakistan, based on claims that excess water present in the loaded cargo has allegedly separated and accumulated at the bottom of the holds, such that the draft survey does not accurately reflect the quantity of discharged cargo.

On the basis of this allegation, cargo interests reject the results of the draft survey and argue that the final outturn quantity of the cargo should be determined by its weight as recorded on the port weighbridges at the time of delivery. This problem is exacerbated at Port Qasim, where it is common practice for coal cargo to be discharged with grabs/conveyor belts and then dumped in the stacking area from where the consignees take delivery.

Although discharge operations are often completed within 2 to 3 days, the delivery process can take longer and so there can be a significant delay between the discharge of the cargo and the time at which the consignees take delivery. This increases the risk that the quantity recorded on the weighbridges will not reflect the quantity discharged from the vessel.

Pakistan does not recognise trade allowances for alleged shortages of solid bulk cargoes. This means that consignees frequently make claims for relatively small amounts and will not allow the vessel to depart until their alleged claim has been paid or they have been provided with a "promise-to-pay" letter of undertaking. If owners refuse, the consignees are likely to arrest the vessel. As the Pakistani courts will only normally lift an arrest if a bank guarantee is issued as security, there is a risk of delay to the vessel while the guarantee is being arranged.

DAMAGE TO CONVEYOR BELT

In addition to claims for cargo shortages, owners are often faced with claims by terminals for damages to their conveyor belt or other equipment used during the discharge operations, which they allege result from the wet condition of the cargo or excessive moisture which creates heavy compacted lumps.

Usually the terminal will serve the master with a letter of protest and claim for the cost of repairs to the conveyor belt. The terminal will then not allow the vessel to sail until they obtain security for their claim. They may also shift the vessel to the outer anchorage upon completion of discharge and withhold port clearance and other certificates to pressurise the owners to settle the claim quickly.

RECOMMENDATIONS

At load port

Cargo spaces and bilge wells should be clean and dry, with the latter covered appropriately so as to prevent the cargo from entering into the bilge well. As coal is often loaded in wet condition, the draft survey carried out at the load port and the bill of lading figure must take into account the water content of the cargo.

During the voyage

The master should carefully log the aggregate quantity of water pumped from the holds during the voyage, based on the vessel's daily bilge sounding logs, which should be signed each day by the crew. If any shortage claim arises, the bilge logs can be disclosed to cargo interests to prove the total amount of water pumped out of the cargo holds.

At discharge port

For Pakistan, where no trade allowances are recognised, it is advisable to carry out a joint survey with all concerned parties.

LEGAL CONSIDERATIONS

What should the master do if the cargo being loaded appears to be too wet?

The master's duty under English law in relation to the clausing of bills of lading was considered in the case of the David Agmashenebeli [2003] 2 Lloyd's Rep. 92.

Article III. 3 of the Hague-Visby Rules provides that "After receiving the goods into his charge the carrier or the master... shall on demand of the shipper issue to the shipper a bill of lading showing amongst other things... (c) the apparent order or condition of the goods."

The Court's view was that the obligation imposed on the master in this regard is of a low order. The master is required to exercise his own judgment on the appearance of the cargo being loaded. If he honestly takes the view that the cargo or any part of it is not in apparent good order and condition, and that is a view that could properly be held by a reasonably observant master, then, even to the extent that not all masters would take the same view, he will nonetheless be entitled to qualify to that effect the statement in the bill of lading. This imposes on the master a duty of a relatively low standard but capable of objective evaluation. Accordingly, the test is a two-fold one of honesty and a reasonable standard of behaviour.

Writers have commented that what should be avoided is for the master to make a false statement which could potentially prejudice a person holding the bill from using it for the purpose intended. For example, this would be the position where the goods were in good order and condition but the carrier insisted on clausing the bill so that the shipper could not obtain payment for the goods from a person to whom he had sold them or from that person's bank. However, the carrier's duty to the shipper with regard to the clausing of the bill would not be broken if the master had (a) honestly taken the view that the goods were not in apparent good order and (b) that view was also one that could properly have been held by a reasonably observant master. The carrier does not give "any contractual guarantee of absolute accuracy as to the order and condition of the cargo or its apparent order and condition" (see Carver on Bills of Lading).

Applying these principles here, if the master objectively thinks that the coal is too wet, he should state that is the case on the bill of lading.

The Loss Prevention guidance on the carriage of coal can be found here: **http://ow.ly/8eCM30s9q1u**

SOME PRACTICAL SOLUTIONS TO THE LEGAL PROBLEMS

1 Members could ask an independent surveyor with appropriate expertise to give an opinion on the wetness of the coal on loading. While the master cannot delegate his obligation to survey the cargo and state the apparent condition on the face of the bill, the views of the surveyor might help to support the master's position, i.e. to help counter any pressure from the shippers/charterers. If Members require any help in appointing a surveyor they should contact the Club or its local correspondents.

2 If there is a genuine dispute as to the condition of the cargo (i.e. a reasonably observant master could equally describe the cargo as being in apparently good order or clause the bills), the master could consider issuing clean bills in exchange for a letter of indemnity from the shippers/charterers. While there is no case law on the point, academic commentary suggests that issuing a clean bill and accepting a letter of indemnity (LOI) in these circumstances would not be a fraud on a third party holder of the bill and so the LOI would be enforceable. In any event, if Members are considering accepting an LOI in such circumstances, they should always contact the Club for its opinion.

CLAIMS AND LEGAL

COURT OF APPEAL CONFIRMS OWNERS' RIGHT TO RECOVER RANSOM PAYMENT AS GA CONTRIBUTION FROM CARGO INTERESTS

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THE ENGLISH COURT OF APPEAL HAS RECENTLY UPHELD A JUDGEMENT OF THE FIRST INSTANCE COURT THAT OWNERS ARE ENTITLED TO RECOVER RANSOM PAYMENTS BY WAY OF GA CONTRIBUTION FROM CARGO OWNERS.

Herculito Maritime Ltd & Ors v Gunvor International BV & Ors "POLAR" [2021] EWCA Civ 1828

The *POLAR* was seized by pirates in the Gulf of Aden in October 2010 and released 10 months later following a ransom payment covered by owners' K&R and H&M war risks cover. The charterparty included various war risks clauses and a 'Gulf of Aden' clause making charterers liable to pay for additional war risks premiums. The question for the Court of Appeal to determine was whether the terms of the charterparty were incorporated into the bill of lading contract between owners and the cargo owners with the effect that the cargo owners were liable to contribute in GA to payments made under additional insurance arranged for the voyage.

The Court of Appeal concluded as follows:

1) the Court recognised that the provision for the charterer to pay for additional war risks and K&R insurance was directly relevant to the carriage and discharge of the cargo;

2) prima facie that part of the additional war risks and Gulf of Aden clauses was incorporated into the bill of lading contract;

3) any 'manipulation' so as to impose the obligation to pay for the additional premium on the bill of lading holders would not be appropriate because the charterparty and the bills of lading were silent as to how the premium would be apportioned between the different holders and there was no provision as to what rights of reimbursement bill of lading holders had against each other;

4) the incorporation of the charterparty terms served a useful purpose as they recorded the basis upon which the owner agreed in the bills of lading that the voyage would be via Suez and the Gulf of Aden, i.e. that the owner would have insurance against the risk of piracy;

5) the bills of lading did not exclude liability on the part of their holders to pay cargo's contribution in GA in the event the vessel encountered perils insured under any of the insurances. To do so, clear express words to that effect would have been needed. The Court referred to the presumption arising from previous cases that no party to a contract intends to abandon its remedies arising by operation of law unless clear express words are used;

6) additionally, cargo's contribution in GA was insured by cargo owners under their cargo policy, so the first instance court's decision was in line with both legal principles and commercial sense.

This case is a useful reminder of the rules that apply when incorporating charterparty clauses into bills of lading and a confirmation by the Court of Appeal that owners are entitled to recover ransom payments from cargo owners by way of GA contribution.

COURT OF APPEAL'S DEFINITION OF "OPERATOR" RESTRICTS LIMITATION OF LIABILITY RIGHTS FOR CHARTERERS' ASSOCIATED COMPANIES

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THE ISSUE IN THIS CASE WAS WHETHER STEMA UK, AN ASSOCIATED COMPANY OF THE CHARTERERS, WAS ENTITLED TO LIMIT ITS LIABILITY UNDER THE 1976 LIMITATION CONVENTION FOR DAMAGE CAUSED BY A BARGE TO AN UNDERWATER CABLE WHICH RESULTED IN A CLAIM FOR ABOUT EUR55 MILLION. THE QUESTION FOR THE COURT TO DECIDE WAS WHETHER STEMA UK WAS DEEMED TO BE THE "OPERATOR" OF THE BARGE WITHIN THE SCOPE OF ARTICLE 1(2) OF THE 1976 LIMITATION CONVENTION, WHICH STATES THAT PARTIES WHO MAY LIMIT THEIR LIABILITY ARE "THE OWNER, CHARTERER, MANAGER OR OPERATOR OF A SEAGOING SHIP".

This article follows up on the article in the February 2021 edition of Risk Watch reporting the Admiralty Court's judgment in the STEMA BARGE II [2020] EWHC 1294.
http://ow.ly/yXZk30s7Vvs

At first instance, the Admiralty Court ruled that Stema UK could limit its liability. That Court held that the meaning of "operator" included Stema UK because, in accordance with the permission of the charterers (an associated company of Stema UK), their employees boarded the barge and operated her in the ordinary course of business while at the cargo discharge port.

The cable owners appealed. In its judgment (*STEMA BARGE II* [2021] EWHC Civ 1880) the Court of Appeal, overturning the first instance decision, found that the meaning of "operator" went beyond mere physical operation and required management or control of the vessel.

The Court of Appeal found that the physical operation of the barge at the discharge port by Stema UK, which only comprised provision of crew to operate the barge's machinery and assist with navigation and cargo discharge, did not involve the element of management and control required so as to render the company an "operator". As such, the Court ruled that Stema UK did not qualify as an "operator of a seagoing ship" and so was not entitled to limit its liability under the 1976 Convention.

The Court suggested that, in order for a group of companies including the owner, charterer and actual operator of a vessel to avoid losing rights of limitation due to the nature of an associated company's limited involvement (as was the case for Stema UK), the group could bring all its associates under one umbrella for the purpose of such protection by ensuring that crew were seconded to the owner or operator and/or ensuring that the owner or operator was responsible for the actions of the associate.

COURT OF APPEAL RULES THAT DEMURRAGE REPRESENTS ALL OF OWNERS' DAMAGES FOR CHARTERERS' DELAY IN COMPLETING CARGO OPERATIONS WITHIN LAYTIME

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UNDER A VOYAGE CHARTERPARTY BASED ON AN AMENDED NORGAIN 1973 FORM, *THE ETERNAL BLISS* CARRIED A CARGO OF SOYBEANS FROM BRAZIL TO CHINA. THE CHARTERPARTY PROVIDED THAT DEMURRAGE WOULD BE PAYABLE AT A DAILY RATE OR A PRO RATA RATE IF DISCHARGE WAS COMPLETED AFTER EXPIRY OF THE ALLOWED LAYTIME PERIOD. UPON ARRIVAL IN CHINA THE SHIP WAITED AT ANCHORAGE FOR 31 DAYS BEFORE BERTHING. AS A RESULT, DISCHARGE WAS NOT COMPLETED UNTIL AFTER THE LAYTIME PERIOD HAD EXPIRED; THE DELAY ALSO CAUSED THE CARGO TO DETERIORATE.

THE ETERNAL BLISS [2021] EWCA Civ 1712

Owners settled a claim made by cargo interests for the deterioration of the cargo and then sought to recover the settlement sum from charterers as damages on the basis of charterers' failure to complete discharge operations within the allowed laytime period. Charterers rejected the claim, arguing that demurrage was the only form of "damages" that owners were allowed to claim for such breach.

At first instance the English High Court found in favour of owners. The Court held that when agreeing a demurrage rate, the parties agreed to nothing other than a quantification of the owners' loss of use resulting from a delay to the ship after the expiry of the laytime, meaning that owners can claim damages for a "different kind of loss".

Charterers appealed to the Court of Appeal. That Court has recently overturned the High Court's decision and ruled in favour of charterers. The Court of Appeal held that in the absence of any contrary indication in the charterparty, demurrage represents the whole of the damages arising from charterers' breach in failing to complete cargo operations within the allowed laytime and if owners wished to claim any form of additional damages, they had to prove that charterers were in breach of a separate obligation. Accordingly, the Court of Appeal decided that charterers were not obliged to pay damages in addition to demurrage.

Owners have appealed to the Supreme Court and it is to be seen whether the Court of Appeal's decision will be overruled. However, as matters stand, the Court of Appeal's decision clarifies a point which was previously uncertain. It also provides a warning to owners to review their charterparties and consider inserting appropriate wording if they wish to avoid the outcome of the decision and any limitation on the type and extent of damages they can claim against charterers in situations where the ship is delayed beyond the allowed laytime period.

ENGLISH SUPREME COURT CONFIRMS THAT A DEFECTIVE PASSAGE PLAN MAKES A SHIP UNSEAWORTHY

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ON 18 MAY 2011 THE CONTAINER SHIP *CMA CGM LIBRA* (THE "*CCL*") GROUNDED WHILST LEAVING THE PORT OF XIAMEN ON ROUTE TO HONG KONG. AT THE TIME OF THE GROUNDING THE *CCL* WAS PROCEEDING OUTSIDE THE BUOYED FAIRWAY. THE *CCL'S* OWNERS STATED THAT THE GROUNDING WAS CAUSED BY AN UNCHARTED SHOAL.

This article follows up on the article in the February 2021 edition of Risk Watch reporting the Court of Appeal's judgment in the CMA CGM LIBRA [2020] EWHC Civ 293.

General average was declared but certain cargo interests refused to contribute to GA expenses. They contended that the grounding occurred because the passage plan had failed to record a notice to mariners that the depths outside the fairway recorded on CCL's charts were unreliable and therefore this failure rendered the ship unseaworthy

Lower courts had held that the passage plan was defective, that passage planning was an aspect of seaworthiness, and that the defective plan caused the master's negligent decision to leave the buoyed fairway. It was also held that an owner's duty to exercise due diligence to make its ship seaworthy cannot be delegated and that the negligence of the master and the second officer in preparing the passage plan amounted to a breach of the owner's duty of due diligence.

THE SUPREME COURT'S JUDGMENT

The CCL's owner appealed to the Supreme Court. The main issue raised on appeal was whether the carrier's obligation under the Hague Rules is subject to a distinction between the navigable state of a ship (its "attributes") and the crew's act of navigating. The owner argued that the "attributes" are the subject matter of the carrier's seaworthiness duty under Art. III Rule 1 of the Hague Rules, whilst the crew's act of navigating is subject to the "nautical fault" exception in Art. IV Rule 2(a). The owner contended that as the passage plan only recorded navigational decisions taken by the crew and so could not be an "attribute" of the ship, the defective passage plan did not render the ship unseaworthy and the owner could rely on the Art. IV Rule 2(a) exception.

The Supreme Court held that the Art. IV Rule 2 exception cannot be relied on in relation to a breach of the carrier's duty to ensure seaworthiness. The pertinent question to ask is whether a prudent owner would have required the relevant defect, had it known of it, to be corrected before sending the ship to sea. Applying the prudent owner test to the *CCL*, given the importance of passage planning, a ship is likely to be unseaworthy if it begins its voyage without a passage plan or if it does so with a defective passage plan which endangers the safety of the ship.

The *CCL's* owner alternatively argued that the crew's failure to safely navigate the ship was not a lack of due diligence by the carrier, since navigation was outside their orbit because it was a matter solely for the master and the crew. This argument also failed. The Supreme Court held that the carrier must exercise due diligence in the task of making the ship seaworthy regardless of who carries out that task. The fact that navigation is the responsibility of the master makes no difference.

SIGNIFICANCE OF THE DECISION FOR FUTURE CASES

It has been argued that the facts of the *CMA CGM LIBRA* case were unusual as the master had effectively admitted that the defective passage plan caused his decision to proceed outside the buoyed fairway and that the failure to record the notice to mariners warning was critical to the safety of the ship.

Although each case depends on its own facts and the *CMA CGM LIBRA* may be distinguishable from future cases, the decision obviously provides cargo interests with a significant potential ground for arguing that a ship is unseaworthy when objecting to a GA contribution demand or to counter a carrier's reliance on Hague/Hague Visby exceptions. The decision also reinforces the importance of ensuring that passage planning is performed diligently and that charts on board are kept fully up-to-date.

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